STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-447

August 4, 2000

MAINE PUBLIC SERVICE COMPANY
Request for Approval of Special Rate
Contract with J.M. Huber, Inc.

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve a special rate contract between Maine Public Service Company (MPS) and J.M. Huber, Inc. (Huber).

II. BACKGROUND

On May 23, 2000, MPS filed a fully executed Power Purchase and Customer Service Agreement (the Agreement) between MPS and Huber. The Agreement pertains to Huber's Easton plant, which consists primarily of facilities for producing oriented strand board (OSB). This plant is presently being served under a special contract approved by the Commission in Docket No. 97-806.

The term of the Agreement is up to 11 years. During such time as Huber remains on the MPS grid, Huber must pay MPS for delivery service in accordance with the full applicable MPUC or FERC rate schedule for delivery service. All stranded cost recovery from Huber's Easton facility, however, will be based on the charge per kWh set forth in Article II(a) of the Agreement. The charge will be adjusted quarterly depending upon the price of oriented strand board. During the first eight years of the Agreement, Huber has agreed not to self-generate or otherwise bypass MPS's delivery system, until Huber has paid a total stranded cost recovery of at least $3,600,000. Moreover, if Huber self-generates or otherwise bypasses the MPS system during the first eight years of the Agreement, the Agreement terminates and Huber would be required to pay a liquidated damage charge equal to the difference between the amount it paid MPS during the effective term of the Agreement and the amount it would have paid MPS during the same period had the Agreement not been in effect.

In its filing, MPS states that the Company entered into the Agreement to eliminate the risk that Huber will cease purchasing electric power through the MPS delivery system. Huber is MPS's second largest customer, accounting for approximately 5% of its 1999 sales.[1] MPS concluded that Huber had a realistic

[1]In 1999, Huber's Easton facilities accounted for sales of approximately 27 million kWh.

alternative for self-generation, which would permit Huber to disconnect from MPS's delivery system.

MPS also states that the Company is willing to make concessions to ensure the continued viability of Huber's Easton facilities. Huber informed MPS that the profitability of the Easton facility compares poorly with Huber's other facilities located in the southern United States. This financial difficulty arises because of the uncertainty of the price of strand board and a stronger market for strand board in the South.

MPS also points out Article IV(a) of the Agreement, which requires the Commission's explicit determination that MPS be allowed to recover in rates to other customers any of the stranded cost recovery from Huber that MPS will forego as a result of the Agreement.

After notice and opportunity to intervene was published, the OPA and Munster Wind Hydro petitioned to intervene. The OPA's petition was granted. On behalf of Munster Wind Hydro, Frederick J. Munster, Jr. stated that as a seller of renewable energy systems in MPS's service territory, special rate contracts to defer self-generation were contrary to the business interests of Munster Wind Hydro. Mr. Munster further stated that a special rate contract for Huber should be allowed only if the Commission allowed the nameplate capacity for net billing-energy systems to increase from 100kW to 750kW.

Two technical conferences were held in June. The parties agree that the record in this case consists of MPS's filing, the transcripts from the technical conference and all responses to data requests. Counsel for MPS objected to the petition to intervene on behalf of Munster Wind Hydro, on the grounds that the petitioner lacked legal standing to intervene, as a competitor to special contracts, and that the issues raised by Mr. Munster were beyond the scope of the proceeding. The Examiner deferred ruling on Munster's petition.[2] We agree with MPS that, as a competitive business interest, Munster lacks the legal standing to require mandatory intervention pursuant to Chapter 110, section 720. We decline to grant his petition on a discretionary basis, see Chapter 110, section 721, because the issues he raises are not relevant to this proceeding.

III. DECISION

Huber's self-generation option would provide its own backup generation and black start capability. Therefore, Huber would not need to be connected to the MPS grid for backup and maintenance service. Since Huber would make no contribution to stranded costs if it left the MPS system by installing cogeneration, MPS and its other customers are better off with the proposed contract, which provides for some contribution to stranded costs.

[2]Although Mr. Munster received notice of the conferences in this case, he did not attend the conferences.

To support its conclusion that Huber's self-generation option is viable, MPS submitted a cogeneration analysis by Richard Silkman. Dr. Silkman's analysis relies heavily upon earlier studies by other consultants. As a wood products plant, Huber's Easton facility is the type of operation which has typically been very receptive to self-generation. The cogeneration system described by Dr. Silkman would require only a limited amount of new equipment (a steam turbine) integrated into what is already a very complex, energy-intensive operation which burns wood waste to produce steam. Based upon the record in this case, we find that MPS was reasonable in concluding that Huber's cogeneration alternative was viable.

As Huber is concerned about the economics of the Easton plant, it may appear less likely that Huber would want to commit to an investment in cogeneration. Of course, the same economic factors that make a cogeneration investment look less attractive, would also make it more likely that electricity costs could cause Huber to operate the plant less or close it altogether. Under either alternative, cogeneration or plant slowdown or shutdown, Huber would greatly reduce its contribution to MPS. Because the Agreement provides MPS with a substantial contribution to stranded costs, the Agreement appears to be preferable to MPS and its other customers than the other alternatives that Huber might choose.

Having examined the economics of Huber's cogeneration alternative,[3] we find that Huber's likely contractual stranded cost contribution of at least $3.6 million is a reasonable attempt by MPS to minimize the discount necessary to retain Huber as a customer. Moreover, we agree in principle that, given the questions concerning the Easton plant's economics, an indexing provision tying the electricity delivery price to the plant's product price makes sense. The operation of the index could adjust the $3.6 million "baseline" stranded cost recovery from $3.2 million to $4.0 million. MPS does not appear to have undertaken any extensive analysis in support of the particular indexing provision agreed to in the Agreement. The index provision simply was carried over from the current special contract approved in Docket No. 97-806. By operation of the incentive rate plan in effect when the current special contract was entered into, Commission approval was automatic within the plan criteria, and no Commission review of the index provision occurred. From the record in this case, it is difficult to confirm that MPS has reasonably maximized stranded cost contribution by agreeing to the particular index mechanism contained in the contract. While the effect of the index provision upon pricing of the proposed special rate could be as great as described, the history of OSB prices since 1998 suggests that the impact will likely be considerably smaller. Given that the impact of the index provision will likely be small and that the index was carried over from the prior contract, it was reasonable for MPS to accept the index provision without extensive analysis.

As described above, Article IV of the Agreement requires the Commission to permit MPS to recover in rates the difference between the revenue collected pursuant to the special contract and the revenue that would have been collected had Huber taken

[3]The economic analysis is subject to a protective order.

service under the applicable rate schedules. During the course of the proceeding, MPS clarified that the Company did not expect a rate change as part of this proceeding but did require an accounting order to defer the impact of the Agreement until the next rate change. We have already found that MPS's actions in reaching this Agreement were reasonable. This Order shall also serve as an accounting order that authorizes MPS, beginning on the effective date of the Agreement, to record the difference between the level of stranded investment under the Huber contract and the level of stranded investment from Huber that MPS currently is recovering in rates,[4] on its books of account as a regulatory asset.

We also note that Article IV, Paragraph (c) of the Agreement provides that the Agreement is null and void if Commission approval is not received by July 1, 2000. By various written and verbal statements communicated to the Hearing Examiner in this case, counsel for Huber and MPS have agreed that the deadline within Paragraph (c) is extended to at least August 4, 2000. We also note that Article IV, Paragraph (d) makes the Agreement effective July 1, 2000 even if Commission approval is granted after July 1, 2000.

Accordingly, the Power Purchase and Customer Service Agreement between Maine Public Service Company and J.M. Huber, Inc. dated May 22, 2000 is approved.

Dated at Augusta, Maine, this 4th day of August, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

THIS ORDER HAS BEEN DESIGNATED FOR PUBLICATION

[4] As the rates that were set in Docket 98-577 assumed some discount off the standard rate schedules for Huber, it is not proper for MPS to defer the difference between the new discount contract and the applicable standard rate schedules.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.